IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

WP(C).No. 22839 of 2007(R)

AGAINST THE ORDER DATED 16/06/2007 IN EP 272/1998 IN OS.48/1998 of PRINCIPAL SUB COURT, PALAKKAD

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PETITIONER:

P.L.S.KANNAN, S/O LATE P.L.S.RAJA SUBRAMANYA IYER, DOUBLE STREET, VADAKKANCHERY, ALATHUR, PALAKKAD, NOW RESIDING AT NO.6, KEERTHI, NILAMANKKARA, MAHADEVAN NAGAR, KAIMANAM, THIRUVANANTHAPURAM-40.

BY ADV. SRI.O.RAMACHANDRAN NAMBIAR
SRI.GEEN T.MATHEW

RESPONDENT:

K.VIJAYAN, S/O KUNJUNNY, KURIAKKOT HOUSE, PUZHAKKAL VILLAGE AND DESOM, THRISSUR TALUK, THRISSUR DISTRICT.

BY ADV. SRI.JACOB SEBASTIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.22839/2007 R

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF ORDER DTD. 23/03/07 IN E.P.272/98 IN O.S.48/98 OF THE PRL.SUB COURT, PALAKKAD.**

EXT.P2: **COPY OF ORDER DTD. 30/05/05 IN E.P.272/1998 IN O.S.48/98 OF THE PRL.SUB COURT, PALAKKAD.**

EXT.P3: **COPY OF ORDER DTD. 16/06/07 IN E.P./272/98 IN O.S.48/98 OF THE SUB COURT, PRL. PALAKKAD.**

EXT.P4: **COPY OF COUNTER STATEMENT FILED BY PETITIONER DTD. 21/02/07 IN E.P.272/98.**

EXT.P5: **COPY OF AFFIDAVIT AND SCHEDULE DTD. 4/08/2006.**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

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W.P.(C) No.22839 OF 2007

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Dated this the 18th day of August 2007

JUDGMENT

This writ petition is preferred against the orders in Exts.P1 to P3 and to direct the execution court to appoint an Advocate Commissioner to identify, inspect and measure the property of the judgment debtor, etc. This is the second round of litigation before this court. The decree holder has obtained a decree and what is proposed to be sold is half right of the judgment debtor in 16 cents of property, full right over the remaining 11 ¾ cents of property and also half right of the judgment debtor in the house which belongs to him. When the matter reached before this court at an early stage this court directed to sell the property afresh after fresh proclamation and that too after effecting publication . In accordance with the same, publication has been made showing these rights and thereafter it has also shown the value of the property estimated by the decree holder, the judgment debtor and also the valuation of the property estimated by the Court Commissioner as provided under Order 21 Rule 11 C.P.C.. Now it is not incumbent upon the court to fix an upset price and it will be sufficient if

the value shown by the decree holder as well as the judgment debtor is shown in the same proclamation. So the particulars furnished for the purpose of sale is absolutely in accordance with law.

2. Now the prayer is to demarcate the property. So far as the half right is concerned, there cannot be any demarcation for the reason what can be sold and purchased is only the half right which the judgment debtor has over those properties. There cannot be an actual delivery with respect to that property. There is no difficulty in demarcating 11 ¾ cents of property which belonged exclusively to the judgment debtor. Therefore if the sale is conducted as proclaimed now, there will not be any illegality or irregularity and the right of all persons are protected and therefore the order passed by the court below to sell the property does not call for any interference.

With these observations, the writ petition is dismissed.

M.N.KRISHNAN, JUDGE

Cdp/-